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JUL 11 2007

In re Application of :
Pederson et al. :
Application No. 09/539287 :
Filing or 371(c) Date: 03/30/2000 :
Attorney Docket Number: :
P48D1-US :
ON PETITION

This is a decision on the "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action, filed May 4, 2007. The petition is properly treated under 37 CFR 1.181(a).

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed July 11, 2003. The Office action set a three (3) month period for reply. No response having been received, the application became abandoned on October 12, 2003. A Notice of Abandonment was mailed February 12, 2004.

The present petition

Applicant files the present petition and asserts that this office mailed the Office action to an old correspondence address. Applicant avers that a Customer Number Update form and accompanying diskette were filed January 28, 2002. Applicant received a Notice of Customer Number Record Change from this Office mailed January 30, 2002.

Review of Application file

A review of the application file and of the petition reveals that the correspondence address for this application was changed on July 29, 2004, from 5666 LaRibera Street, Livermore, CA., to

2140 Research Drive, Livermore, CA. Thereafter, on October 26, 2006, the correspondence address was changed to the present address: 7005 Southfront Road, Livermore, CA.

A review of row 96 of the Customer Number Update form reveals that the filing date associated with this application appearing thereon is "3/30/1999". Office records reveal that the actual filing date of this application is 3/30/2000.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action.

MPEP 711.03(c)

Analysis

At the time of Applicant's filing of the Customer Number Update form, the filing date of the application was required. In this instance, the filing date provided on the form did not match Office records, and the data for this application was rejected.

Office records reveal that the Notices mailed July 31, 2006 were mailed to the correspondence address of record. Thereafter, Applicant changed his correspondence. The MPEP states that "[w]here an attorney or agent of record (or applicant, if he or she is prosecuting the application pro se) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP Code). See 37 CFR 11.11. The notification should also include his or her telephone number. MPEP 601.03. Accordingly, the petition to withdraw the holding of abandonment is dismissed.

Alternate venue

Applicant is urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the

date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
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Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.


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Office of Petitions